

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

R & S DISTRIBUTION, INC.,	:	APPEAL NO. C-130250
	:	TRIAL NO. A-1106157
and	:	
STEPHEN P. HAYWARD,	:	<i>JUDGMENT ENTRY.</i>
	:	
Plaintiffs-Appellees,	:	
	:	
vs.	:	
ROBERT ALSFELDER,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Robert Alsfielder appeals the trial court’s entry of summary judgment in favor of R & S Distribution and Stephen Hayward. For the reasons that follow, we affirm the judgment of the trial court.

In a previous action, Mr. Hayward, R & S Distribution and Mr. Alsfielder were held jointly and severally liable to Hartge Smith Nonwovens (“judgment creditor”) for a judgment in the amount of \$1,429,000. *R & S Distribution, Inc. v. Hartge Smith Nonwovens, Inc.*, Hamilton C.P. No. A-0302985 (Apr. 21, 2008). In the present action, R & S Distribution and Mr. Hayward (collectively, “Mr. Hayward”) seek contribution from Mr. Alsfielder for a portion of the damages.

Mr. Hayward filed a motion for summary judgment with an affidavit in which he averred that he had paid the entire judgment. Attached as exhibits to the affidavit were copies of two checks to the judgment creditor from Specialty Logistics, Inc., written on Mr. Hayward’s behalf and signed by Mr. Hayward. Mr. Alsfielder filed an

opposing motion for summary judgment, arguing that money had not been paid to the judgment creditor until nearly three weeks after the complaint was filed, and that Mr. Hayward did not have standing to seek contribution because Specialty Logistics, not Mr. Hayward, had paid the judgment. Mr. Alsfelder also moved for Civ.R. 11 sanctions against Mr. Hayward.

At the conclusion of a hearing on the motions, the trial court announced that it would grant Mr. Hayward's motion for summary judgment and deny Mr. Alsfelder's motions for summary judgment and for sanctions. The next day, Mr. Alsfelder filed a motion to reconsider, arguing for the first time that because the underlying tort for which Mr. Hayward, Mr. Alsfelder, and R & S Distributing were found liable was an intentional tort, Mr. Hayward was not eligible for contribution. The trial court entered its judgment granting Mr. Hayward summary judgment and ordering Mr. Alsfelder to pay one-half the judgment amount plus costs and statutory interest. It also denied Mr. Alsfelder's motions for summary judgment and sanctions.

In his first assignment of error, Mr. Alsfelder asserts that the trial court erred when it granted summary judgment to Mr. Hayward.

Mr. Alsfelder argues that Mr. Hayward was not entitled to contribution for the intentional tort of conversion. *See* R.C. 2307.25(A). Mr. Alsfelder, however, did not raise this argument below until after the court had made its decision. Accordingly, he has waived the issue for purposes of appeal. *See Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121, 679 N.E.2d 1099 (1997). That he asserted a general defense in his answer that "[t]he complaint fails to state a claim * * * for which relief can be granted" was not sufficient to put the issue of the applicability of R.C. 2307.25(A) before the trial court or to preserve the issue for the appeal.

Mr. Alsfelder further contends that the complaint was not ripe for review because, contrary to what the complaint said, the payment to the judgment creditor was not made until after the complaint was filed. Nothing in the Ohio Revised Code,

however, requires that a judgment be actually paid before a separate action for contribution is instituted. *See* R.C. 2307.25. Here, Mr. Haywood apparently had already reached an agreement with the judgment creditor when he filed the lawsuit, but the checks were written after the complaint was filed and before Mr. Alsfelder filed an answer. We conclude that, under these circumstances, the matter was ripe for adjudication by the trial court.

Mr. Alsfelder also claims that Mr. Hayward did not have standing to seek contribution because the payment to the judgment creditor was made by Specialty Logistics. We are not persuaded. There is no dispute that Mr. Hayward was the sole shareholder of Specialty Logistics, that the payment by Specialty Logistics was made on Mr. Hayward's behalf, and that the money paid by the corporation was recorded as a direct distribution to Mr. Hayward. Speculation about any tax benefit that Mr. Hayward may have garnered from the transaction was not sufficient to create an issue of fact about whether Mr. Hayward had paid the judgment creditor. The first assignment of error is overruled. And because the second assignment of error—that the court should have granted Mr. Alsfelder's motion for summary judgment—is based on the same arguments, we overrule it as well.

The third assignment of error is that the court erred in not granting Mr. Alsfelder's Civ.R. 11 motion for sanctions. Because the court granted judgment to Mr. Hayward, sanctions against him were not appropriate. The third assignment of error is overruled.

Therefore, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., HILDEBRANDT and DEWINE, JJ.

To the clerk:

Enter upon the journal of the court on December 20, 2013

per order of the court _____.

Presiding Judge